

ARTICLE 12630.2

FAMILY AND MEDICAL LEAVE

CONTENTS

SUBARTICLE 1. GENERAL PROVISIONS

- 1 1 Purpose
- 1 2 Policy
- 1 3 Applicability

SUBARTICLE 2. PROCEDURES

- 2 1 Leave Entitlement
- 2 2 Intermittent Leave or Reduced Schedule
- 2 3 Substitution of Paid Leave
- 2 4 Notice of Leave
- 2 5 Medical Certification
- 2 6 Protection of Employment and Benefits
- 2 7 Health Benefits
- 2 8 Records and Reports
- 2 9 Grievances

APPENDIX A. Your Rights Under FMLA Fact Sheet

APPENDIX B. Federal Employee Entitlements Fact Sheet

## SUBARTICLE 1. GENERAL PROVISIONS

1 1. Purpose. To set forth the regulations and procedures to be followed in granting leave to civilian personnel at the activity pursuant to the Family and Medical Leave Act (FMLA).

1 2. Policy. Per Public Law 103 3(Family and Medical Leave Act) and 5 Code of Federal Regulations (CFR) Part 630, eligible Federal employees will be provided up to 12 administrative workweeks of unpaid leave during any 12 month period for certain family and medical needs. This Article will be used in conjunction with applicable law, regulation, and collective bargaining agreements.

1 3. Applicability. This instruction applies to most permanent employees of the Federal Government, including employees paid from nonappropriated funds, who have completed at least 12 months of service (which need not be recent or consecutive months). It does not apply to intermittent employees or temporary employees serving under a temporary appointment with a time limitation of one (1) year or less.

## SUBARTICLE 2. PROCEDURES

### 2 1. Leave Entitlement

a. An employee is entitled to a total of 12 administrative workweeks of unpaid leave ("FMLA leave") during any 12-month period for one or more of the following reasons:

(1) The birth of a child of the employee and the care of the newborn.

(2) The placement of a child with the employee for adoption or foster care.

(3) The care of a spouse, son, daughter or parent of the employee, if such spouse, son, daughter or parent has a serious health condition.

(4) A serious health condition of the employee that makes the employee unable to perform the essential functions of his or her position.

b. Except as provided in paragraph 2 1(c) below, the 12-month period referred to in paragraph 2 1(a) begins on the date an employee first takes FMLA leave and continues for 12 months. An employee is not entitled to 12 additional workweeks of leave until the previous 12-month period ends and an event or situation occurs that entitles the employee to another period of FMLA leave. (This may include a continuation of a previous situation or circumstance.)

c. Any holidays authorized under 5 U.S.C. 6103 or by Executive Order and nonworkdays established by Federal Statute, Executive or Administrative Order that occur during the period in which the employee is on FMLA will not be counted toward the 12-week entitlement to FMLA.

d. The entitlement to a total of 12 administrative work weeks of leave under paragraphs 2 1a(1) and (2) of this section will:

(1) Begin prior to or on the actual date of birth or placement for adoption or foster care.

(2) Expire 12 months after the date of birth or placement.

Leave for birth or placement must be concluded within 12 months after the date of birth or placement.

e. When employee requests FMLA leave, the activity will provide guidance concerning the employee's rights and obligations, as contained in Appendix B.

f. FMLA leave may not be subtracted from the employee's entitlement to such leave unless the employee confirms for management that he/she is invoking the entitlement to it. An employee's written notice of his/her intent to take FMLA leave in accordance with paragraph 2 4 of this Article suffices as the employee's confirmation.

## 2 2. Intermittent Leave or Reduced Schedule

a. Leave taken under paragraphs 2 1a(1) or (2) will not be taken intermittently or on a reduced leave schedule unless the employee and management agree. To obtain approval for such leave, the employee will submit a written request via the chain of command, to the designated approving official, (recommend second level supervisor be the deciding official), who will make the final decision.

b. FMLA leave taken under paragraphs 2 1a(3) or (4) may be taken intermittently or on a reduced leave schedule only when medically necessary, subject to the notice and certification requirements contained in paragraphs 2 4 and 2 5 of this Article. To obtain approval for such leave, the employee will timely submit a written request, along with medical certification, via the chain of command, to the appropriate approving level who will make the final decision. If the deciding official doubts the validity of the certification, the procedures in paragraph 2 5b of this Article apply.

c. If an employee takes leave under paragraphs 2 1a(3) or (4) intermittently or on a reduced leave schedule that is foreseeable based on planned medical treatment or recovery from a serious health condition, the activity may place the employee temporarily in an available alternative position for which the employee is qualified and can better accommodate recurring periods of leave. The employee's second level supervisor will determine whether an available alternative position will be used, and whether it meets the criteria set forth in 5 CFR 630.1204(d).

## 2 3. Substitution of Paid Leave

a. An employee may elect to substitute the following paid time off for any or all of the periods of FMLA leave taken:

(1) Accrued or accumulated annual or sick leave, consistent with current law and regulations governing the granting and use of annual or sick leave. See Article 12630 for information regarding granting and use of annual or sick leave.

(2) Advanced annual or sick leave approved under the same terms and conditions that apply to any other employee who requests annual or sick leave.

(3) Leave made available to an employee under the Voluntary Leave Transfer Program or the Voluntary Leave Bank Program consistent with Article 12630.1.

(4) Compensatory time off.

(5) Credit hours accrued under a flexible work schedule.

(6) Educator leave.

b. The employee must notify the activity of his/her intent to substitute paid time off for the period of FMLA leave to be taken prior to the date such paid time off commences. The employee may not retroactively substitute paid time off for leave without pay under FMLA.

## 2 4. Notice of Leave

a. If the need for FMLA leave is foreseeable based on an expected birth, placement for adoption or foster care, or planned medical treatment, the employee will provide notice of his/her intention to take such leave not less than 30 calendar days before the date the leave is to begin. If the date of birth or placement or planned medical treatment requires leave to begin in less than 30 days, the employee will provide notice as soon as practicable after learning of the need for it. Such notice will be submitted to the employee's immediate supervisor, and must:

(1) Be signed and dated by the employee.

(2) Specify the period of the FMLA leave.

(3) Indicate whether the employee elects unpaid leave or wishes to substitute paid time off for all or part of the period.

b. If FMLA leave taken under paragraphs 1 4a(3) or (4) is foreseeable based on planned medical treatment, the employee will consult with his/her supervisor and make a reasonable effort to schedule medical treatment so as not to disrupt unduly the operations of the activity, subject to the approval of the health care provider. The supervisor may, for justifiable cause, request that an employee reschedules medical treatment, subject to the approval of the health care provider.

c. If the need for FMLA leave is not foreseeable, e.g., a medical emergency or the unexpected availability of a child for adoption or foster care, and the employee cannot provide

30-calendar days notice of his/her need for leave, the employee will provide notice as soon as practicable. If necessary, notice may be given by an employee's personal representative (e.g., a family member or other responsible party). A personal representative must be designated in writing by the employee.

d. An employee may not retroactively invoke his/her entitlement to FMLA leave unless the employee, and/or his/her personal representative, is physically or mentally incapable of invoking the employee's entitlements to FMLA leave during the entire period in which the employee is absent from work for a FMLA qualifying purpose. In this case, the employee may retroactively invoke his/her entitlement to FMLA leave within 2 workdays after returning to work. An employee who does not comply with the notification requirements and does not provide medical certification signed by the health care provider that includes all the information required by law and OPM's regulations is not entitled to FMLA leave.

## 2 5. Medical Certification

a. An employee requesting FMLA leave under paragraphs 1 4a(3) or (4) of this Article must support the request by written medical certification issued by the health care provider of the employee or the health care provider of the spouse, son, daughter, or parent of the employee. Employees are required to provide medical certification of a serious health condition no later than 15 calendar days after the date the agency requests the medical certification. If under particular circumstances, it is not practicable to provide the requested medical certification within 15 calendar days after the date requested by the agency, despite the employee's diligent good faith efforts, the employee must provide the medical certification within a reasonable period of time under the circumstances involved, but no later than 30 calendar days after the date the medical certification was requested by the agency. The written medical certification will include:

(1) The date the serious health condition commenced;

(2) The probable duration of the serious health condition; and

(3) The appropriate medical facts within the knowledge of the health care provider regarding the serious health condition, including a general statement as to the incapacitation, examination, or treatment that may be required by a health care provider.

(4) For the purpose of leave taken under paragraph 2 1a(3) of this Article:

(a) A statement from the health care provider that the spouse, son, daughter, or parent of the employee requires psychological comfort and/or physical care; needs assistance for basic medical, hygienic, nutritional, safety, or transportation needs or in making arrangements to meet such needs; and would benefit from the employee's care or presence; and

(b) A statement from the employee on the care he or she will provide and an estimate of the amount of time needed to care for his or her spouse, son, daughter, or parent.

(5) For the purpose of leave taken under paragraph 2 1a(4) of this Article, a statement that the employee is unable to perform the essential functions of his or her position, based on written information provided by the agency on the essential functions of the employee's position or, if not provided, discussion with the employee about the essential functions of his or her position; and

(6) In the case of certification for intermittent leave or leave on a reduced leave schedule under paragraphs 2 1a(3) or (4) of this Article for planned medical treatment, the dates on which such treatment is expected to be given and the duration of such treatment.

b. If the deciding official doubts the validity of the employee's medical certification, he/she may require, at the activity's expense, that the employee obtain the opinion of a second health care provider designated or approved by the deciding official. If the opinion of the second health care provider differs from the original certification, the deciding official may require, at the activity's expense, that the employee obtain the opinion of a third health care provider designated or approved jointly by the deciding official and the employee.

(1) The opinion of the third health care provider will be binding on both parties.

(2) Health care providers may not be activity employees or be under Department of Defense administrative oversight on a regular basis except in areas where access to health care is extremely limited.

c. While an employee is on FMLA leave, the deciding official may periodically require, at the activity's expense, subsequent medical recertification from the health care provider, not more often than every 30 calendar days. However, the deciding official may require subsequent medical recertification more frequently than every 30 calendar days if:

(1) The employee requests that the original leave period be extended.

(2) The circumstances described in the original medical certification have changed significantly.

(3) The deciding official receives information that casts doubt upon the continuing validity of the medical certification.

d. Prior to returning to work, an employee who takes medical leave for the employee's own serious health condition whose position has specific medical standards or physical requirements, or who is covered by a medical evaluation program, will be required to obtain written medical certification from the health care provider that the employee is able to perform the essential functions of his/her position. A designated activity official shall notify the employee of this requirement before leave commences, or as soon thereafter as practicable. The activity shall pay the expense of obtaining the written medical certification.

2 6. Protection of Employment and Benefits. Any employee who takes FMLA leave is entitled, upon return to work, to be returned to:

- a. The same position held by the employee when the leave commenced, or
- b. An equivalent position with equivalent benefits, pay, status, and other terms and conditions of employment.

The deciding official will determine whether an employee returning from leave will be returned to an equivalent position instead of his/her permanent position. As soon as practicable after a decision has been made to return the employee to an equivalent position, the employee shall be notified in writing.

2 7. Health Benefits. An employee enrolled in a health benefits plan under the Federal Employees Health Benefits Program who takes Leave Without Pay (LWOP) per this Article may continue his/her health benefits enrollment while on LWOP and arrange to pay the appropriate employee contributions into the Employee Health Benefits Fund. The employee will make such contributions consistent with 5 CFR 890.502.

2 8. Records and Reports

a. Deciding Officials will maintain for 3 years the following information concerning each employee who takes FMLA leave:

- (1) The employee's rate of basic pay.
- (2) The occupational series for the employee's position.
- (3) The number of hours of FMLA leave taken.
- (4) Whether FMLA leave was taken as follows:
  - (a) Under paragraphs 2 1a(1), (2) or (3).
  - (b) Under paragraph 2 1a(4).

b. When an employee transfers to a different activity or agency, the deciding official will ensure that the following information is provided to the gaining activity or agency:

- (1) The beginning and ending dates of the employee's 12 month period, as determined under paragraph 1 4c.
- (2) The number of hours of FMLA leave taken, as determined under paragraph 1 4c.

2 9. Grievances. Employees who believe management has not fully complied with this Article may file grievances under the provisions of Article 12771 or the negotiated grievance procedure, or use any other procedure that may be available to them.



## **APPENDIX A**

### **YOUR RIGHTS UNDER THE FAMILY AND MEDICAL LEAVE ACT OF 1993**

FMLA requires covered employers to provide up to 12 weeks of unpaid, job-protected leave to "eligible" employees for certain family and medical reasons. Employees are eligible if they have worked for a covered employer for at least 1 year and for 1,250 hours over the previous 12 months and if there are at least 50 employees within 75 miles.

**REASONS FOR TAKING LEAVE:** Unpaid leave must be granted for any of the following reasons:

- > to care for the employee's child after birth, or placement for adoption or foster care;
- > to care for the employee's spouse, son or daughter, or parent, who has a serious health condition; or
- > for a serious health condition that makes the employee unable to perform the employee's job.

At the employee's or employer's option, certain kinds of paid leave may be substituted for unpaid leave.

**ADVANCE NOTICE AND MEDICAL CERTIFICATION:** The employee may be required to provide advance leave notice and medical certification. Taking of leave may be denied if requirements are not met.

- > The employee ordinarily must provide 30 calendar days advance notice when the leave is "foreseeable."
- > An employer may require medical certification to support a request for leave because of a serious health condition and may require second or third opinions (at the employer's expense) and a fitness for duty report to return to work.

**JOB BENEFITS AND PROTECTION:**

- > For the duration of FMLA leave, the employer must maintain the employee's health coverage under any "group health plan."
- > Upon return from FMLA leave, most employees must be restored to their original or equivalent positions with equivalent pay, benefits, and other employment terms.
- > The use of FMLA leave cannot result in the loss of any employment benefit that accrued prior to the start of an employee's leave.

**UNLAWFUL ACTS BY EMPLOYERS:** FMLA makes it unlawful for any employer to:

- > Interfere with, restrain, or deny the exercise of any right provided under FMLA;
- > discharge or discriminate against any person for opposing any practice made unlawful by FMLA or for involvement in any proceeding under or relating to FMLA.

**ENFORCEMENT:**

- > The U.S. Department of Labor is authorized to investigate and resolve complaints of violations.
- > An eligible employee may bring a civil action against an employer for violations.

FMLA does not affect any Federal or State law prohibiting discrimination or supersede any State or local law or collective bargaining agreement which provides greater family or medical leave rights.

**FOR ADDITIONAL INFORMATION:** Contact the nearest office of the Wage and Hour Division, listed in most telephone directories under U.S. Government, Department of Labor.

**APPENDIX B**

**FEDERAL EMPLOYEE ENTITLEMENTS UNDER THE**

**FAMILY AND MEDICAL LEAVE ACT OF 1993**

(effective August 5, 1993)

**ENTITLEMENT**

Sections 6381 through 6387 of Title 5, United States Code, as added by Title II of the Family and Medical Leave Act of 1993 (FMLA) (Public Law 103 3, February 5, 1993), provides covered Federal employees with entitlement to 12 workweeks of unpaid leave during any 12-month period for the following purposes:

the birth of a son or daughter of the employee and the care of such son or daughter;

the placement of a son or daughter with the employee for adoption or foster care;

the care of a spouse, son, daughter, or parent of the employee who has a serious health condition; or

a serious health condition of the employee that makes the employee unable to perform the essential functions of his or her position.

Under certain conditions, FMLA leave may be taken intermittently, or the employee may work under a work schedule that is reduced by the number of hours of leave taken as family and medical leave. An employee may elect to substitute other paid time off, as appropriate, for any unpaid leave under the FMLA. FMLA leave is in addition to other paid time off available to an employee.

**JOB BENEFITS AND PROTECTION**

Upon return from FMLA leave, an employee must be returned to the same position or to an "equivalent position with equivalent benefits, pay status, and other terms and condition of employment."

An employee who takes FMLA leave is entitled to maintain health benefits coverage. An employee may pay the employee share of the premiums on a current basis or pay upon return to work.

**ADVANCE NOTICE AND MEDICAL CERTIFICATION**

The employee must provide notice of his or her intent to take family and medical leave not less than 30 calendar days before leave is to begin or as soon as is practicable.

An agency may request medical certification for FMLA leave taken to care for an employee's spouse, son, daughter, or parent who has a serious health condition or for the serious health condition of the employee.

This is a brief summary of your entitlements and responsibilities under the FMLA. Contact your agency personnel office for additional information.